

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KCCP Trust d/b/a Time Warner Cable)	CSR 6391-E
)	
)	
Petition for Determination of Effective)	
Competition in Platte City, Missouri (MO0075))	

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 2007

Released: July 18, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KCCP Trust d/b/a Time Warner Cable ("KCCP") has filed with the Commission a petition pursuant to Section 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in Platte City, Missouri (the "Franchise Area"). KCCP alleges that its cable system serving the Franchise Area is subject to effective competition pursuant to Sections 623(a)(2) and 623(l)(1)(4) of the Communications Act¹ and the Commission's implementing rules,² and therefore is exempt from cable rate regulation. KCCP claims the presence of effective competition in the Franchise Area stems from the competing cable services provided by ExOp of Missouri Inc. d/b/a Unite ("Unite"). Finding that KCCP is subject to effective competition in Platte City, we grant the petition.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier ("LEC") or its

¹ 47 U.S.C. § 543(a)(4) & 543(l)(1)(4).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁶

3. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator's service in the franchise area.⁷ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁸

III. DISCUSSION

4. KCCP operates a cable television system in the Franchise Area for which it seeks a determination of effective competition and, having been assigned the Community Unit Identification (CUID) number shown in the caption, qualifies as the incumbent cable operator within the Franchise Area for purposes of the "LEC" effective competition test at issue in this proceeding. KCCP provided information showing that the State of Missouri granted a certificate for the provision of telephone exchange and local exchange access service to Unite in the Franchise Area.⁹ Therefore, Unite qualifies as a LEC for purposes of the LEC effective competition test.¹⁰

5. Unite received a local cable franchise from Platte City on May 12, 2004, authorizing it to provide cable programming service throughout the Franchise Area.¹¹ KCCP states that Unite is required by its franchise to fully construct its system such that its plant passes 100 percent of all households before December, 2007.¹² KCCP estimates that Unite already passes approximately 304 homes, over fifteen percent of the approximately 2,000 households in Platte City, and the company plans to pass 100 percent of all households when construction is complete.¹³ KCCP asserts that Unite's current level of buildout is more than sufficient for the Commission to immediately deem its cable system subject to effective competition.¹⁴ In addition to holding a franchise for the provision of cable service within the Franchise Area, Unite has distributed press releases, marketing materials, and engaged in local

⁶ 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the "LEC" effective competition test.

⁷ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

⁸ *Id.*

⁹ Petition at 2 & Exhibit B.

¹⁰ *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(1).

¹¹ Petition at 7 & Exhibit C.

¹² *Id.* at 3-4.

¹³ *Id.* at 4. *See* Exhibit E.

¹⁴ *Id.* at 4-6 *citing* *Cablevision of Boston, Boston, MA*, 17 FCC Rcd 4772, 4776 (2002), *affirming* 16 FCC Rcd 14056 (CSB 2001); *Kansas City Cable Partners*, 18 FCC Rcd 14187, 14189 (MB 2003).

advertising within the Franchise Area so that potential cable subscribers in the Franchise Area are reasonably aware of the availability of its cable services and need only contact Unite to obtain service.¹⁵

6. The Unite marketing materials show that its cable system offers over 100 channels of video programming that includes non-broadcast programming services such as MSN BC, CNN, and ESPN, as well as a complement of several local television broadcast stations.¹⁶ Based on this record, we find that the Unite complement of programming services compares with the programming available on KCCP's systems¹⁷ and is sufficient to satisfy this aspect of the LEC effective competition test.¹⁸ KCCP also provided evidence that there are no regulatory, technical, or other impediments to Unite's provision of service within the Franchise Area and the record evidence indicates that more than fifteen percent of households in the Franchise Area already substantially overlap those of KCCP. Based on the foregoing, we conclude that KCCP has submitted sufficient evidence to demonstrate that its cable system serving Platte City is subject to effective competition.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by KCCP Trust d/b/a Time Warner Cable for a determination of effective competition in Platte City, Missouri **IS HEREBY GRANTED**.

8. **IT IS FURTHER ORDERED** that any certification to regulate basic cable service rates granted to Platte City, Missouri **IS REVOKED**.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ Petition at 8.

¹⁶ *Id.* at 9 & Exhibit A.

¹⁷ *Id.* at 6 & Exhibit G.

¹⁸ *See* 47 C.F.R. § 76.905(g).

¹⁹ 47 C.F.R. § 0.283.